

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**THOMAS J. CAPANO,**

Petitioner,

v.

Civ. Act. No. 06-58-\*\*\*

**THOMAS L. CARROLL,**

Warden, and **JOSEPH R. BIDEN, III,**  
Attorney General for the State of Delaware,

Respondents.

**MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order of June 7, 2007, an answering brief is due to be filed on June 22, 2007. D.I. 33.

2. Counsel for respondents have been, and continue to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. One Deputy is out of the office on paternity leave. Another is scheduled to be out of the office next week for a work-related seminar. In addition, the secretary for the Appeals Division has been out for most of this week. Counsel are doing their best to prioritize cases, but will need additional time to complete the answering brief.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-

74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondents' workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' third request for an extension of time to file an answering brief.

5. Respondents submit that an extension of time to and including July 13, 2007 in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers  
Chief of Appeals Division  
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Del. Bar. ID No. 3759

Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500

DATE: June 21, 2007

**RULE 7.1.1 CERTIFICATION**

I hereby certify that counsel for the petitioner, Joseph M. Bernstein, Esquire, has been contacted and he has no objection to the subject matter of this motion.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General

Counsel for Respondents

Date: June 21, 2007

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**THOMAS L. CARROLL,**

Warden, and **JOSEPH R. BIDEN, III,**  
Attorney General for the State of Delaware,

Respondents.

**ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2007,

WHEREAS, respondents having requested an extension of time in which to file an answer,  
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good  
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answering brief shall be filed on or before July  
13, 2007.

\_\_\_\_\_  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2007, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF which will send notification of such filing to:

Joseph M. Bernstein, Esq.  
800 North King Street, Suite 302  
Wilmington, DE 19801

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
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